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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,044	12/29/2003	Dennis Schultz	HISHE: 66719	7386

24201 7590 06/15/2005

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EXAMINER

SAETHER, FLEMMING

ART UNIT

PAPER NUMBER

3677

DATE MAILED: 06/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/749,044

Applicant(s)

SCHULTZ, DENNIS

Examiner

Flemming Saether

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 20-25 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent Nos. 6,655,888 and 6,736,580. Although the conflicting claims are not identical, they are not patentably distinct from each other because all the features of the claims of the instant application are included in the parent only the claims of the instant application are broader and as such would be anticipated by the claims of the parent applications.

Claims 26-29 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 8-19 of U.S. Patent Nos. 6,655,888 and 6,736,580 and over claims 20-25 of co-pending application 11/080,025. Although the conflicting claims are not identical, they are not patentably distinct from each other, again, because all the features of the claims of the instant application are included in the parent only the claims of the instant application are broader and as such would be anticipated by the claims of the parent applications.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 20-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Barlow (US 3,72,904). In the embodiment of Fig. 4, Barlow discloses a fastener having a socket drive (27) comprising a plurality of equally spaced, inwardly directed, rounded lobes (31-33) of equal radius and equidistant from the axis of the fastener and a corresponding plurality of non-contact sections (28-30) each located opposite a lobe and also equidistant from the center. There is also provided recesses between the lobes and non-contact sections (read as being at the transition between the lobe and non-contact section) which have a smooth transition to each of the lobe and non-contact surface. Since the claims are directed to a socket, the clearance between the lobes and the key driver is considered an intended use of which the Barlow would be capable depending upon the size of the fastener.

Claims 20-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Barlow (US 3,72,904).

In regards to claims 20-25, the embodiment of Fig. 12 in Ruzicka discloses a socket comprising a plurality of rounded inwardly directed lobes with contact surfaces opposite a plurality of non-contact surfaces all equally spaced about a center. There is also provided recesses between the lobes and non-contact sections (read as being at the transition between the lobe and non-contact section) which have a smooth transition

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to each of the lobe and non-contact surface. The drive socket being a fastener has not been given patentable weight since it occurs in the preamble and the body of the claims do not "breath life and meaning to the preamble"¹ also, the clearance between the socket and the key is considered an intended use since the claims are limited to a socket, of which Ruzicka would be capable².

In regards to claims 26-29, the embodiment of Fig. 20 in Ruzicka discloses plurality or equally spaced, inwardly directed and, equidistant lobes including a radiused portion (at 26) and a tangential flat surface (at 30). Again, the drive socket being a fastener has not been given patentable weight since it occurs in the preamble and the body of the claims do not "breath life and meaning to the preamble" also, the clearance between the socket and the key is considered an intended use since the claims are limited to a socket, of which Ruzicka would be capable.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 20-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allen (US 960,244) in view of Anderson (US 5,960,681). Allen discloses a conventional

¹ See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

² See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

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type fastener having a hexagonal recess for receiving an allen wrench but, does not disclose the recess provided with rounded lobes. Anderson discloses a fastener driver also having a hexagonal recess but, in Anderson the recess is provided with a plurality of equally spaced, inwardly directed, rounded lobes (34) of equal radius and equidistant from the axis of the fastener and a corresponding plurality of non-contact surfaces (28-32) each located opposite a lobe and also equidistant from the center for gripping the fastener. There is also provided recesses between the lobes and non-contact sections (read as being at the transition between the lobe and non-contact section) which have a smooth transition to each of the lobe and non-contact surface. At the time the invention was made, it would have been obvious for one of ordinary skill in the art to provide the recess of Allen with lobes as disclosed in Anderson for the purpose of gripping the driver. The fastener being gripped to the driver would facilitate insertion and removal of the fastener by preventing the fastener and driver from being easily separated. Again, since the claims are directed to a fastener, the clearance between the lobes and the key driver is considered an intended use of which the Barlow would be capable depending upon the size of the fastener.

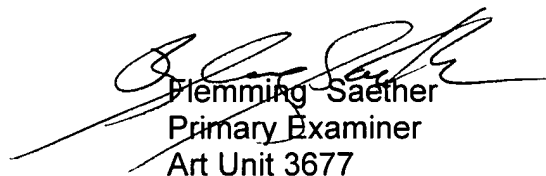
Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Flemming Saether whose telephone number is 571-272-7071. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 571-272-7075. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Flemming Saether
Primary Examiner
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